

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8411 OF 2007

Ismail Husenbasha Shaikh .. Petitioner

Versus

The Minister, F & C.S.D. &

Consumer Protection .. Respondents

Mr.R.S.Apte i/b. A.S.Kulkarni for petitioner

Mr.R.M.Patne, A.G.P. for Respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd December 2007

P.C.

. The challenge in this petition is to the order passed in pursuance of the show cause notice dated 3rd May 2007 addressed to the

petitioner with regard to alleged violation of provisions of Essential Commodities Act and the Control Orders issued thereunder.

2. The orders which have been passed in pursuance of the show cause notice are to the effect that the petitioner has been informed that his Kerosene licence stands suspended. This order has been confirmed all through out, viz., in appeal and in revision and that is how the instant petition.

3. Mr.Apte learned Counsel appearing for petitioner submits that the principles of natural justice have been violated and that the Additional Collector, Solapur had no jurisdiction to suspend the licence inasmuch it is the authority under the Essential Commodities Act (in this case Food Officer/Authority) which deal with this essential commodity. That apart, his case is that the order is passed pursuant to a show

cause notice which alleges that the petitioner has been issued the subject licence which was utilised by him for distribution of Kerosene. However, there has been some crime registered under sections 3 and 7 of the Essential Commodities Act. This crime has been registered pursuant to the incident of 28th April 2007. There is panchnama referred to in the show cause notice. Based upon this, kerosene licence is sought to be cancelled on the ground that the petitioner has violated the terms and conditions of the licence by diverting kerosene and distributing the same to unauthorised parties.

4. After the petitioner replied to the show cause notice, order has been passed and it refers to several acts of omissions and commissions on the part of the petitioner which do not form part of the show cause notice. This is clear from the original order of suspension passed by the Additional Collector, Solapur and a copy of which

is annexed as Annexure "D" to the petition.

5. I enquired of Mr.Patne as to how the order was passed on this ground and for some reasons, when none of them have been referred to in the notice. Thus, the show cause notice alleges breach and violation of certain terms and conditions of the licence whereas the orders of suspension are based upon the acts of omission and commission enlisted therein. Basic requirement that the allegations in the show cause notice must form part of the ultimate order of suspension. It has not been prima facie satisfied.

6. Mr.Patne has tendered an affidavit in reply of the Additional Collector, Solapur. The Additional Collector has defended the order by pointing out that the petitioner's explanation was called for and he was given enough opportunity. The affidavit refers to one

Nillappa Jadhav, against whom crime has been registered, along with petitioner. There is some reference to a raid conducted on the premises. Rest of the affidavit contains bare denials and asserts that enough opportunity was given to the petitioner.

7. In my view, neither the affidavit nor the submissions of Mr.Patne answer the above basic issue. The orders under challenge, therefore, are vitiated on account of the same being passed for reasons and grounds other than those forming part of the show cause notice.

8. However, considering the nature of the allegations and the facts and circumstances of the present case, instead of petitioner being granted full relief and allowed to operate the licence, interest of justice would be sub-served if the matter is remitted to the Authority for consideration afresh in accordance with law.

Upon enquiry being made from both Counsel, they agree that the matter can be decided by the Collector, Solapur, before whom the petitioner shall appear on the date and time fixed by this Court. Accordingly, following order:-

(a) Orders under challenge are set aside;

(b) Matter is remitted to Collector, Solapur before whom the petitioner shall appear on Thursday 13th December 2007 at 11.00 a.m. The Collector shall thereafter, decide the matter and pass appropriate orders in accordance with law within a period of 15 days from the date of appearance of petitioner.

(c) Needless to state that all contentions as are raised in the petition and before me during oral submissions are

open for being urged and merely because the petitioner has agreed to appear before the Collector, issue of his jurisdiction will not be treated as given up by him. The said issue along with other issues are expressly kept open.

Petition disposed of with the aforesaid directions. No costs.

(S.C.Dharmadhikari, J)